a figure of $200 per month is the appropriate multiplicand and that 20 years is the appropriate multiplier and on the basis of these figures I arrive at a sum of $48,000.

For completeness, I should add that in assessing the said sums of $35,000, $3,500 and $48,000 as general damages for the respective items I have of course taken into account the fact that these sums are awarded together and each is slightly lower than what I would otherwise assess in isolation. There will be judgment for the 1st Plaintiff for the sum of $86,500, being the total amount of general damages. As for special damages to the 2nd Plaintiff, the amount has been agreed at $200 and accordingly, there will be judgment in the said sum for the 2nd Plaintiff. The Defendant will have to pay the costs of this action.

*Order accordingly.*

Solicitors: *Murphy & Dunbar; W.K. Tan & Co.*

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## *IN RE* KIE HOCK SHIPPING (1971) PTE. LTD.

**[O.C.J. (Sinnathuray J.) December 28, 1984]**
**[Singapore – Companies Winding-up No. 56 of 1978]**

*Company Law – Directors – Duties of directors – Inspectors – Criminal and civil liability – Claim against directors by Liquidator on winding-up – Whether director ought to be excused – Companies Act (Cap. 185), ss. 132, 195, 196, 305 & 354.*

In this application made by the Official Receiver, the Liquidator of Kie Hock Shipping (1971) Private Ltd. ("the Company"), the issue is whether the 2nd respondent, the executive director of the Company, has been guilty of misfeasance or breach of duty under section 305 of the Companies Act. The 1st respondent, the managing director of the Company, had earlier admitted liability and was ordered to pay the liquidator the sum of $11,551,000.00 being the total amount of unrecovered debts and interest thereon at 8% p.a. from May 26, 1978 until payment. The Company was wound up on May 26, 1978. On April 19, 1979, the Finance Minister appointed 2 inspectors under sections 195 and 196 of the Companies Act to investigate into the affairs of the Company and criminal proceedings were instituted against both the respondents. There were 6 charges against the 2nd respondent. He pleaded guilty to 5 of them and consented to the 6th charge to be taken into consideration in assessing sentence. Only the 1st charge relating to breach of duty as a director under section 132(1) of the Act is relevant to the present application.

Certain Panamanian Companies were among the affiliated companies which had dealings with the Company. As agents of the Panamanian Companies, all disbursements and advances made by the Company in respect of the Panamanian ships were debited from the accounts of the Panamanian Companies kept by the Company, and all freight earnings and other income of the ships were credited to the same accounts. By 1977 a number of large claims were made against the Company and the debts of the Panamanian Companies were by now about $11,000,000.00. But both the respondents took no action to recover the debts owing to the Company. The 1st respondent was actively disposing of the ships of the Panamanian Companies. The 2nd respondent was aware of this. No proceeds of the disposal were paid to the Company or the Panamanian Companies.

The 2nd respondent contended that his paternal uncle, the 1st respondent, had sole control in the management of the Kie Hock Group of Companies. On the Panamanian Companies owned by his uncle, the 2nd respondent said that not being a director or shareholder, he had no control whatsoever of them. The crux of his case was that throughout his tenure as executive director of the Company, he was totally powerless.

**Held**: (1) the 2nd respondent cannot be heard to say that he had no power to prevent the breaches of duties by the 1st respondent;

(2) the 2nd respondent as executive director was greatly negligent in the management of the affairs of the Company. His failure to collect the Panamanian debts was the single most important factor that caused the Company to be wound up;

(3) in discharging his duties, a director must act honestly and must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. The position in Singapore is that what is required of directors by case law in England is provided by statute in section 132 of the Act;

(4) in the context of this application, every director owes a duty to his company to use reasonable diligence in discharge of his duties. Failure by a director to do so would be a breach of duty of his office. That breach of duty would give rise to an action by the company against the director for damages suffered by the company. The commission of that breach of duty by the director would also be a criminal offence;

(5) having regard to the conduct of the 2nd respondent in the management of the affairs of the Company which led to his conviction, the 2nd respondent should be jointly and severally liable with the 1st respondent. As he had not acted honestly and reasonably in the discharge of his duties as director, he ought not to be excused under sections 354 of the Act.

*Cases referred to:*

(1) *Re Etic Ltd.* [1928] Ch. 861, 875.
(2) *Re City Equitable Fire Insurance Co.* [1925] Ch. 407, 427.

SUMMONS-IN-CHAMBERS.

*Miss Yap Siew Yong* for the Official Receiver.
*A.B. Netto* for the 2nd respondent.

*Cur. Adv. Vult.*

**Sinnathuray J.** : In this application made by the Official Receiver, the Liquidator of Kie Hock Shipping (1971) Private Limited ("the Company"), in Summons in Chambers No. 5125 of 1981, the issue is whether the second respondent, Tay Beng Chuan, the executive director of the Company, has been guilty of misfeasance or breach of duty under section 305 of the Companies Act (Cap. 185) ("the Act").

At an earlier hearing of the Summons in Chambers before the learned Chief Justice, the first respondent, Tay Hock Gwan, the managing director of the Company having through his counsel admitted liability, an order was made against him in terms of the application. It was declared that the first respondent "has been guilty of misfeasance or breach of duty in relation to the said Company in failing between December 30, 1977 and May 26, 1978 to cause action to be taken by the said Company to recover debts owed to it by twelve companies mentioned in the said Summons which companies were incorporated in the Republic of Panama and further in allowing the said debts to accumulate such that by May 26, 1978 they totalled $11,551,000.00"; it was ordered that the first respondent pay the liquidator "the sum of $11,551,000 being the total amount of the said unrecovered debts and interest thereon at 8% per annum from May 26, 1978 until payment"; and it was further ordered that he pay the costs of the application.

The Company was wound up on May 26, 1978 in Companies Winding Up No. 56 of 1978 on a petition presented by Eastern Lloyd Trading Private Limited and the Official Receiver was appointed its liquidator. Then nine creditors of the Company sent a petition to the Minister for Finance. On April 19, 1979, the Minister appointed Mr. Chan Sek Keong, an Advocate and Solicitor, and Mr. Wong Siong Poon, a Public Accountant, as Inspectors under sections 195 and 196 of the Act to investigate into the affairs of the Company.

There was a very lengthy investigation into the affairs of the Company by the Inspectors. A certified copy of their Report was tendered at the hearing of this application. The Inspectors investigated, among various matters, the debts due to the Company from the 12 Panamanian companies mentioned in the Summons. The Inspectors found that "The 'loss' of the Panamanian accounts was the single most important factor which accounted for the sorry state of the Company's financial affairs".

Based on the Report of the Inspectors, the Attorney-General instituted criminal proceedings against the two respondents, Tay Hock Gwan and Tay Beng Chuan. There were six charges against the second respondent, Tay Beng Chuan. On September 29, 1981 he pleaded guilty to five of the charges and consented to the sixth charge to be taken into consideration in assessing sentence. For the purpose of this application only the first charge is relevant. The amended first charge reads as follows:

> "You, Tay Beng Chuan are charged that you, between the 30th day of December 1977 and 26th day of May, 1978, being a Director of Kie Hock Shipping (1971) Pte Ltd did commit a breach of your duty under section 132(1) of the Companies Act, Cap 185 to at all times use reasonable diligence in the discharge of your duties, to wit, by failing to cause action to be taken by the said Kie Hock Shipping (1971) Pte Ltd to recover debts owed to Kie Hock Shipping (1971) Pte Ltd by twelve companies incorporated in the Republic of Panama viz:
>
> Compania Naviera Thompson SA
> Africa Shipping Co Ltd Inc
> Gammewah Enterprises Ltd SA
> Tali Shipping Co Ltd SA
> Compania De Navegacia Laiton SA
> Holley Shipping Co Ltd SA
> Karingo Shipping Co Ltd SA
> Kadima Shipping Co Ltd SA
> Benteng Enterprises Co Ltd SA
> Sahaka Enterprises
> Salama Shipping Ltd SA
> Gambela Enterprises Ltd SA
>
> which on the 30th day of December 1977 amounted to $10,291,000 and which were allowed to accumulate in the accounts of Kie Hock Shipping (1971) Pte Ltd such that by the 26th day of May 1978, these debts totalled $11,551,000 and you have thereby committed an offence punishable under section 132(3)(b) of the Companies Act, Cap. 185."

On this amended charge the second respondent was fined $1,500 and in default two months' imprisonment. Following the convictions of the two respondents, the Official Receiver as liquidator of the Company took out this application.

Having introduced the facts that led to this application, I now proceed to summarise the facts relevant to the application.

The Company was incorporated on November

27, 1970 with its registered office at 48-A Cecil Street, Singapore. The nominal capital of the Company was $2 million divided into 2 million shares of $1 each. The amount of capital paid up or credited as paid up was $1 million.

The first respondent, Tay Hock Gwan, was at all material times the managing director and the major shareholder of the Company. At the date of the winding of the Company he was holding 98% of the issued share capital of the Company. He was also at all material times the managing director and had sole control of 12 companies he incorporated in the Republic of Panama ("the Panamanian Companies").

The second respondent, Tay Beng Chuan, is the nephew of the first respondent, Tay Hock Gwan. He was at all material times the executive director of the Company. He was also a shareholder of the Company, he owned 2% of the issued share capital of the Company at the date of the winding up order.

The Company commenced trading on January 1, 1971 by taking over the shipping operations and the assets and liabilities of its predecessor company, Kie Hock Shipping Co. (Pte.) Ltd. The Company was engaged in operating and chartering its own vessels, hiring of its motor launches, operating a workshop to service and repair its vessels and acting as agent for vessels owned by its related and affiliated companies.

During the years 1971 to 1974, the Company did well. The profits from operating its vessels alone increased from $275,000 in 1971 to $9,616,000 in 1974. After 1974, however, freight income began to drop but operating expenses continued to rise. In 1977, the operations of the Company's ships alone resulted in a loss of $3.7 million.

The Panamanian Companies were among the affiliated companies which had dealings with the Company. Each of the Panamanian Companies owned one or more ships and the Company was the Singapore agent for all the Panamanian ships. As at January 1, 1975, 39 Panamanian ships were noted in the records of the Company. However, information derived from the books of account of the Company showed that the Company did not always operate the Panamanian ships for the accounts of their respective registered owners.

As agents of the Panamanian Companies, all disbursements and advances made by the Company in respect of the Panamanian ships were debited to the accounts of the Panamanian Companies kept by the Company, and all freight earnings and other income of the ships were credited to the same accounts. However, in addition to the normal disbursements incurred by the ships, various other expenses which could not be satisfactorily accounted for were similarly debited to these accounts. There were also other private expenses incurred by the first respondent, Tay Hock Gwan, and his family which were debited to these accounts. The combined debts of the Panamanian Companies amounted to $6,446,000 in 1975 and $10,291,000 in 1976.

During 1976 and 1977, a number of large claims were made against the Company by both foreign and local creditors. Among the Company's creditors who were pressing for payment at that time were:

(a) Berger Paints (S) Pte Ltd,
(b) Caltex (Asia) Ltd,
(c) Castrol (Far East) Pte Ltd,
(d) Jurong Shipyard Ltd,
(e) Keppel Shipyard Ltd,
(f) Port of Singapore Authority,
(g) Sembawang Shipyard Ltd,
(h) Van Der Horst (Asia) Pte Ltd, and
(i) Sin Chiao Shipping Pte Ltd

The total claims of these nine creditors alone were in excess of $5 million.

By 1977 the Company was in critical financial difficulties. The debts of the Panamanian Companies were by now $10,774,000. But both the respondents, Tay Hock Gwan, and Tay Beng Chuan, as managing director and executive director respectively of the Company, took no action whatsoever to recover the enormous debts owed to it from the Panamanian Companies. Instead, the first respondent, Tay Hock Gwan, was at about that time actively disposing of the ships belonging to the Panamanian Companies to his relatives and other affiliated companies. The second respondent, Tay Beng Chuan, was aware of this. No proceeds of the disposal of the ships were credited to the accounts of the Panamanian Companies kept by the Company. To aggravate matters, both the respondents further allowed the debts of the Panamanian Companies to accumulate such that by May, 26, 1978, at the date of the winding up of the Company, they totalled $11,551,000.

The ships were the only assets of the Panamanian Companies. By disposing of them without payment to the Company, the first respondent, Tay

Hock Gwan, effectively deprived the Company of all possibility of recovering the debts owing by the Panamanian Companies. In the Statement of Affairs filed by the second respondent, Tay Beng Chuan, all the Panamanian debts due to the Company were classified by him as irrecoverable on the basis that the Panamanian Companies had no assets to which the Company could have recourse.

There is no doubt that the loss of $11,551,000 suffered by the Company as a result of the irrecoverability of the Panamanian debts was the single most important factor which accounted for the hopeless state of the Company's insolvency. At the date of the hearing of the application, the claims filed by the Company's creditors in this winding up was about $24.3 million.

The facts that I have outlined are not in dispute. In his affidavit for leave to defend these proceedings, the second defendant refers to some other facts. There is also annexed to the affidavit a copy of a lengthy letter his solicitors wrote to the Attorney-General making representations on his behalf for the withdrawal of the charges brought against him under the Act. The plea was rejected.

The second respondent states that the first respondent, Tay Hock Gwan is his paternal uncle. It was his uncle who had sole control in the management of the Kie Hock Group of Companies. His uncle was also the beneficial owner of most of the shares in the Kie Hock Group of Companies. He was given 2% shares in the Company by his uncle as a mere token. He never complained about this small shareholding, though he thought he should have received more shares because his father, Tay Kie Hock, was the founder of the Company. But he did not raise the question with his uncle as he had always considered him as "a father". His own father had passed away in 1942 when he was three years old and his mother had returned to China. He was left in the care of his uncle and his second wife. On account of this and also, because his uncle was a very strict and stern man he carried out whatever he was required to do by his uncle without questioning.

On the Panamanian Companies owned by his uncle, the second respondent says in his affidavit that not being a director or shareholder he had no control whatsoever of them. And he adds that as his uncle had complete control of the Company and the other companies in the Group, he was in no position to initiate any action by the Company against the Panamanian Companies on his own.

The second respondent's case is that throughout his tenure as executive director of the Company, he was totally powerless. Not having resigned from the positions he held in the Company, he realises now that he may be regarded as having condoned the defaults or the breaches of duties of his uncle, but at that time he was torn between his filial duties and self-protection. He also had faith that his uncle would eventually pull the Kie Hock Group of Companies out of its crisis. Furthermore, knowing that the shipping business is cyclical, he had at all times expected the business to turn around and the Group of Companies to survive as a whole.

The first observation I made on the claims of the second respondent is that whilst he considered his uncle "the overall boss" of the Company, there is irrefutable evidence that after 1976 it was the second respondent who as executive director of the Company was mainly responsible for the management of the Company. On this the Inspectors have noted in paragraph 27 of the Report under the heading "Reasons for the Collapse of the Company":

> "According to Tay Beng Chuan, Tay Hock Gwan became indifferent to the business of the Company in 1976.
>
> .....According to himself, Tay Hock Gwan left the management of the Company to the other directors after 1976.

Secondly, though the second respondent was not a director or shareholder in any one of the Panamanian Companies, as executive director in charge of operations of the Company, he had full and effective control of all the Panamanian ships managed by the Company. That this was so is borne out in the evidence of the uncle to the Inspectors.

> "Q Since you owned the ships and the Panamanian companies lost money can it be regarded as you losing your money?
>
> A Yes, but I have not taken any money from the Panamanian companies. There is also no accounts, so I didn't know.
>
> Q But all the ships were yours?
>
> A Yes, but I still had no knowledge of the Panamanian companies' accounts.
>
> Q But you were the MD you should know.
>
> A Yes, I was the MD but I trusted others to manage the companies' affairs. They were educated in UK and so I trusted them and depended on them."

Thirdly, the transaction I am about to refer to shows that the second respondent had not acted honestly in the management of the Company. At about the time the Company was insolvent, there was a transfer of five Panamanian ships to a company called Uni-Ocean to set off certain loans. But the books of the Company showed that the Panamanian Companies which owed these debts did not owe any money to Uni-Ocean. These facts were known to the second respondent for he was at that time not only the executive director of the Company but also the managing director of Uni-Ocean. In his evidence to the Inspectors, he admitted that by Uni-Ocean accepting the ships, he had created a wrong impression to the public.

In my opinion the foregoing facts and observations amply refute the plea of the second respondent that he was under the control of his uncle and that as executive director he was totally powerless.

There is also the claim made by the second respondent that because he had only 2% of the Company's shares, he had no influence in the Company. Not only is this claim not supported on the facts, it is also untenable in law as the powers of a director of a company are not dependent on the number of shares he holds in the company. In any event, Miss Yap for the Official Receiver has drawn my attention to the fact that the Articles of Association of the Company do not require directors to hold any qualification shares.

I also agree with Miss Yap that the second respondent cannot in this application be heard to say that he had no power to prevent the breaches of duties by his uncle. This is because he pleaded guilty to the first amended charge for breach of his own duty under section 132(1) of the Act. In that criminal trial, when the summary of facts were read to him, he admitted that by 1977 the Company was in great financial difficulties; that at that time he knew that his uncle was actively disposing of the Panamanian ships to relatives and to other companies owned by him; that his uncle did it to deprive the Company from having recourse to the only assets owned by the Panamanian Companies; that as executive director of the Company, he took no action whatsoever to recover the debts owed to the Company by the Panamanian Companies; and that he had failed to use reasonable diligence in the discharge of his office as a director of the Company.

For reasons I shall give later, I am of the view that there is no difference in kind between the breach of duty referred to in section 132 and section 305(1) of the Act. Therefore, the plea of guilty of the second respondent on the amended first charge and the admissions made by him in the criminal trial are both relevant and admissible in these proceedings. If not for the fact that there are other arguments that I have to consider, in my judgment, on this ground alone, the applicant is entitled to an order in terms of the application.

Another submission for the second respondent was that there is no causal connection between the alleged breaches of the second respondent and the losses suffered by the Company. The Panamanian debts, it was said, were accumulated by the Company over a number of years in the course of trading and these debts reflected part of the accumulated losses sustained by the Kie Hock Group of Companies in those years. The proximate cause of these losses was the failure of the Group as a whole as a result of recession, bad management and the accumulation of these debts.

To consider this submission, I have to expand on the facts outlined earlier. In Appendix E of the Report of the Inspectors, there is in tabulated form the "Panamanian Companies' Current Account Balance in Kie Hock's Books as at 31st December" for the year 1971 to 1977 and, for the year 1978 up to May 26, 1978, the date of the winding-up order of the Company. The Appendix shows that in the years 1971 to 1974 the Panamanian Companies had credit balances with Kie Hock. In 1974 the credit balance was $996,000. But in 1975, there was a sudden deficit of $6,448,000; thereafter, in 1976 the deficit was $10,254,000, in 1977 it was $10,711,000, and on May 26, 1978 it was $11,509,000.

I have already said the second respondent does not dispute that when the Panamanian debts were accumulated, he was in charge of operating the Panamanian vessels. On this evidence, Miss Yap has rightly said that had the second respondent exercised reasonable care and diligence, he would not have continued operating those vessels when the debts due from the Panamanian Companies in 1975 amounted to a staggering sum of $6,446,000. He, however, did worse things. He stood by and allowed his uncle to dispose of the Panamanian vessels. After that, the debts remaining unpaid and unsecured, he gave further credits to the Panamanian Companies so that by the time of the winding up of the Company, there was $11.5 million owed by the Panamanian Companies. The second respondent has declared in the Statement of Affairs that

the whole amount of $11.5 million owed by the companies was uncollectable. When the Inspectors asked him why he made that declaration he replied that as all the Panamanian ships had been sold there were no other assets left.

On these facts, there can be no doubt that the second respondent as executive director was grossly negligent in the management of the affairs of the Company. His failure to collect the Panamanian debts was, as the Inspectors said, "the single most important factor" that caused the Company to be wound up. It was therefore futile to argue that there is no causal connection between the breaches of duties committed by the second respondent and the losses suffered by the Company.

On the topic of causal connection, Mr Netto has asked a rhetoric question as to what sort of action is it alleged that the second respondent could have or should have taken. Miss Yap for the applicant has given the avenues that were open to the second respondent. He could have called a meeting of directors, have his views or protest recorded, and a vote taken on the question whether action should be taken to recover the debts from the Panamanian Companies. As executive director in charge of operations, he could have given instructions that the Company stop acting as agents for the Panamanian ships. He could also have instructed the Company's solicitors to sue the Panamanian Companies. As the Panamanian ships were under his control, he could have caused writs *in rem* to be issued against them and have them arrested. This would have prevented the claims of the Company being defeated by the transfer of the ships. He could also have reported or threatened to report to the Registrar of Companies the breaches of duty of his co-director. In any event, he could have resigned from his office as director. He could then, on his own motion, have applied to the High Court for relief under section 354(2) of the Act.

There remains for me to consider the legal argument raised by Mr. Netto for the second respondent. He has submitted that the summary jurisdiction conferred by section 305(1) of the Act invoked against the second respondent is misconceived because the claim of the applicant is outside the scope of the section. In other words, the argument is that there was no misconduct on the part of the second respondent of the kind comtemplated by section 305 of the Act that he should be made liable thereunder.

The relevant part of section 305(1) of the Act reads as follows:

> "If in the course of winding up it appears that any ... officer has ... been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of the liquidator ... examine into the conduct of such officer and compel him to repay ... the money ... or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the ... misfeasance or breach of trust or duty as the Court thinks just."

The wording of this subsection is similar to section 267(1) of the Companies Act (Cap. 174 of the 1955 Revised Edition) except that the words "or duty" after "breach of trust" were not there in the old section. When the old Ordinance was repealed and the Companies Act 1967 enacted by Act No. 42 of 1967, the words "or duty" appeared in section 305(1) of that Act and is in the present Reprint of section 305(1) of the Act. It is true to say that section 305(1) of the Act is based on section 333 of the U.K. Companies Act 1948, but again the words "or duty" are not included in the U.K. Act. They were taken from Australia: see section 305 of the Companies Act 1961 of the State of Victoria.

As regards section 333 of the U.K. Act, it is settled law in England that the section does not create any new rights but only provides a summary mode of enforcing rights which apart from the section would have to be enforced by an ordinary action in the Courts. So, if a company or its liquidator has a right of action against a director, the section can be employed in the winding up as a cheaper and effective summary method of enforcing the right: see *Palmer's* Company Law Vol 1, 62–27 at page 698. It was said by Maugham J. in *Re Etic Ltd*[1], that the procedure under this section "is not applicable to all cases in which the company has a right of action against an officer of the company. It is limited to cases where there has been something in the nature of a breach of duty by an officer of the company as such which has caused pecuniary loss to the company. Breach of duty of course would include a misfeasance or a breach of trust in the stricter sense, and the section will apply to a true case of misapplication of money or property of the company...". Thus, it has been evolved by the Courts in England that even though the words "breach of duty" are not found in section 333, a director who commits a breach of his duty towards his company is, in a winding up of the company, *prima facie* liable under the said section.

As to what are the duties of directors, there are the often quoted remarks of Romer J. in *Re City Equitable Fire Insurance Co* [2]. He said that to ascertain the duties of a director of a company, it is necessary to consider the nature of the company's business and the manner in which the work of the company is, reasonably in the circumstances and consistently with the articles of association, distributed between the directors and the other officials of the company. In discharging those duties, amongst other duties, a director must act honestly and must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. In England, a breach of any of the duties by a director towards the company would give rise to an ordinary action by the company, and in a winding up to proceedings under section 333.

The position in Singapore is that what is required of directors by case law in England is provided by statute in section 132 of the Act. The relevant subsections of section 132 are these:

" (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.
... ... ...

(3) An officer or agent who commits a breach of any of the provisions of this section shall be –

(a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand dollars.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company."

In the context of this application, every director owes a duty to his company to use reasonable diligence in the discharge of his duties. Failure by a director to do so would be a breach of duty of his office. That breach of duty would give rise to an action by the company against the director for damages suffered by the company. The commission of that breach of duty by the director would also be a criminal offence.

Then there is section 305(1) of the Act. It gives power to a Court, in the winding up of a company, to assess damages against, amongst other persons, a delinquent director of the company. One of the defaults referred to in section 305(1) of the Act, which I have set out above, is "breach of duty" of a director "in relation to the company". It is plain to me that the "breach of duty" referred to here embraces all of the duties of a director referred in section 132(1) and (4) of the Act. Thus, when a company is wound up, its director can be proceeded against under section 305 of the Act for the duty owed by him to his company to use reasonable diligence in the performance of his duties. I therefore reject the argument that the breach of duty contemplated by section 305 of the Act is different from that provided in section 132 of the Act, and for that matter, the argument that the admission made by the second respondent in the criminal case of failure to use reasonable diligence in the discharge of duties is not a breach of duty actionable under section 305 of the Act. In my view, these arguments ignore the clear language of section 305 of the Act and completely ignore section 132 of the Act.

Finally, Mr. Netto in his submission maximised on the observation of the Inspectors that they appreciated the inability of the second respondent to influence his uncle, the first respondent, in the management of the Company. But the Inspectors also said that the second respondent had not tried hard enough. The Inspectors were of the view that the second respondent should have stopped the first respondent from or resisted him in transferring the Panamanian ships. They were also of the view that the second respondent should have taken steps to sell the Panamanian ships, at least those which were no longer profitable and collected the proceeds to reduce the Panamanian debts to the Company. On a review of the evidence, I have said that after the first respondent went to Hong Kong sometime in 1976, it was the second respondent who was left in charge of the management of the Company. As executive director in charge of operations, he had in his hands the reins of the Company. But he failed to discharge the duties and obligations required of him as such director of the Company.

At the conclusion of the hearing, I held that he was liable for dereliction of his duties as director of the Company. Though section 305 of the Act gives the Court a very wide discretion covering the amount and the rate of interest the second respondent should be required to pay, having regard to the conduct of the second respondent in the management of the affairs of the Company which led to his conviction, I was of the view that he should be jointly and severally liable with the first respondent. As the second respondent had not

acted honestly and reasonably in the discharge of his duties as director, I concluded that he ought not to be excused under section 354 of the Act. For all these reasons, I made an order in terms of the application.

*Application allowed.*

Solicitors: *Netto Low & Partners.*

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## ABDUL WAHAB BIN SULAIMAN v. COMMANDANT, TANGLIN DETENTION BARRACKS

**[O.C.J. (Sinnathuray J.) January 7, 1985]**
**[Singapore – Originating Motion No. 63 of 1984]**

*Military Law – Conviction and sentence by General Court Martial – Appeal to Military Court of Appeal – Enhancing of sentence – National serviceman left Army when appeal was heard – Habeas corpus – Jurisdiction and powers of Military Court of Appeal – Constitution of Singapore, Art. 9(2) – R.S.C. 1970, O. 54 – Singapore Armed Forces Act, 1972, ss. 108 & 121(1), (4), (5) & (9).*

*Administrative Law – Military Court of Appeal – Jurisdiction and exercise of powers – Not subject to review by prerogative writs or orders of High Court.*

The applicant applied for an order of *habeas corpus* against the respondent, the Commandant, Tanglin Detention Barracks. The applicant, a national serviceman, was convicted on April 30, 1984 by a General Court Martial on his plea of guilty for possession of a controlled drug contrary to section 6(a) of the Misuse of Drugs Act, 1973. He was ordered to undergo detention for 6 months. The Head of Legal Services of the Singapore Armed Forces appealed on May 2, 1984 against inadequacy of sentence to the Military Court of Appeal. The applicant served his sentence and was released from detention on July 13, 1984. He completed his national service and was released from the Army on July 23, 1984. The appeal against the sentence was heard by the Military Court of Appeal consisting of a Supreme Court judge as president and 4 other members, on July 27, 1984 and August 11, 1984. The applicant questioned the competency of the Military Court of Appeal to hear and adjudicate on the appeal.

**Held**, dismissing the application (1) the Military Court of Appeal is a superior court. Its jurisdiction and the exercise of its full power to hear and determine appeals from a subordinate military court are matters that cannot be reviewed by any of the prerogative writs or orders of the High Court. An order for a writ of *habeas corpus* therefore cannot lie against the respondent;

(2) when the notice of appeal was given on May 2, 1984, the Military Court of Appeal was seised of the appeal and the applicant was a full-time national serviceman subject to military law. The appeal was therefore properly before the Military Court of Appeal. Its jurisdiction was not ousted by reason of the fact that the applicant was no longer in the army when that court heard the appeal.

**Editorial Note**: Observations on the distinction between superior and inferior courts are discussed in detail in the Judgment.

*Case referred to:*

*R.* v. *Cripps, ex parte Muldoon and Ors.* [1983] 3 All E.R. 72.

ORIGINATING MOTION.

*J.B. Jeyaretnam* for the applicant.
*S. Tiwari* (Senior State Counsel) for the respondent.

*Cur. Adv. Vult.*

**Sinnathuray J.** : By way of notice of motion, the applicant, Abdul Wahab bin Sulaiman, through his counsel, Mr. J.B. Jeyaretnam, seeks an order for a writ of *habeas corpus* against the Commandant, Tanglin Detention Barracks.

The facts which are not in dispute can be stated shortly.

On March 23, 1982 the applicant was enlisted into the Army for full-time national service. On April 30, 1984 he was convicted by a General Court Martial on his plea of guilty to a charge of committing a civil offence contrary to section 108 of the Singapore Armed Forces Act, 1972 ("the SAF Act") for being in unlawful possession of 0.73 gram of cannabis, a controlled drug, contrary to section 6(a) of the Misuse of Drugs Act, 1973, and punishable under section 29 of the said Act. He was ordered to undergo detention for six months with effect from March 14, 1984. On May 2, 1984, the Head of Legal Services of the Singapore Armed Forces lodged a notice of appeal in the Military Court of Appeal against the sentence of six months on the grounds that it was manifestly inadequate. The applicant served his sentence at the Tanglin Detention Barracks and was released from detention on July 13, 1984. He completed his national service and was released from the Army on July 23, 1984.

The appeal against sentence by the Head of Legal Services was heard by the Military Court of Appeal on July 27 and August 31, 1984. The Military Court of Appeal consisted of Mr. Justice F.A. Chua, as President, Mr. Goh Heng Leong, Mr. Giam Chin Toon, advocates and solicitors, Colonel Lee